



October 9, 2002

**VIA HAND DELIVERY**

Ms. Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington  
Boise, ID 83702-5983

**RE: Case No. USW-T-00-3**

Dear Ms. Jewell:

Enclosed for filing with this Commission is an original and seven (7) copies of PageData's Reply to Qwest's Answer.

Thank you for your assistance in this matter.

Sincerely,

Joseph B. McNeal

Enclosures

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## EXHIBITS

- Exhibit 1 – Minnesota’s Administrative Law Judge’s Findings of Fact
- Exhibit 2 – Pre- and Post-Metzger, and Type 1 & 2 Interconnection Agreement Excerpts
- Exhibit 3 – PageData’s letter to Qwest dated August 29, 1998 Requesting a Single Point of Interconnection
- Exhibit 4 – US WEST New Vector Interconnection Agreement Excerpts – Single Point of Interconnection Provision and Pricing Schedule
- Exhibit 5 – Unfiled Amendments/Settlement Agreements with Arch and PageNet
- Exhibit 6 – FCC Memorandum Opinion and Order #02-276, WC Docket No. 02-89, in the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1).

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Appearing Pro Se

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF Qwest's Section 271 )  
Proceeding ) Case No. USW-T-00-03

**PAGEDATA'S REPLY TO QWEST'S ANSWER**

PageData hereby submits its REPLY TO QWEST'S ANSWER to PageData's MOTION TO REOPEN PROCEEDINGS.

Qwest's orchestrated discrimination against local Idaho paging companies is hardly "insignificant and inconsequential". Qwest calls PageData's complaints "anecdotes of 'isolated instances' of service quality glitches or noncompliance [that] do not affect the public interest inquiry"<sup>1</sup> Qwest does not want the Commission to reopen the 271 proceedings for obvious reasons, and instead, wants the Commission to hold another separate proceeding to hear PageData's complaints. PageData will leave it to the Idaho Commission's discretion to hear PageData's complaint under Qwest's 271 proceedings or to hold a separate proceeding to hear PageData's complaint. PageData's complaint is in the local public interest and directly relevant to the 271 proceedings, which require open

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<sup>1</sup> Qwest Corporation's Opposition to the Motion of PageData to Reopen Proceedings, dated October 3, 2002, Page 4, 1<sup>st</sup> paragraph

markets. The Commission's decisions on the issues brought up in PageData's complaint can give stability to the local competitive market. Qwest wants the Commission to ignore the fact that Qwest discriminated against Idaho carriers by not providing the same access to terms and conditions to all carriers by keeping certain interconnection agreements secret. Qwest failed in its primary duties under Section 251 and 252.

In its initial motion, PageData raised several timely issues related to Qwest's suppression of competition in the telecommunications market in Idaho as well as Qwest's illegal and discriminatory conduct in its treatment of Idaho carriers. The Qwest practices outlined by PageData unquestionably constitute a pattern of conduct that has blocked competition far beyond what has been exposed in the public record to date, in Qwest's 271 authority application. As shown below, the integrity of the public record is at stake given the proven instances cited by PageData of Qwest's abysmal credibility record and unlawful behavior. Much of the public evidence of Qwest's anticompetitive behavior has only recently surfaced in proceedings before other state commissions and the Federal Communications Commission.

PageData's motion in this proceeding is based on a timely filing to bring this evidence of a pattern of misconduct and related discriminatory behavior to the attention of the Idaho Public Utilities Commission ("Commission"), prior to any approval of Qwest's 271 authority to become a competitor in the potentially lucrative long distance business in Idaho. Qwest's assertion that it has "successfully opened its market to competition" is obviously not true if PageData's factual evidence of illegal and discriminatory conduct by Qwest in Idaho is considered. Contrary to Qwest's claims regarding legitimate issues of discrimination, PageData has simply asked the

Commission to examine this newly revealed, and significant evidence of Qwest's anticompetitive behavior and illegal activities to conceal its market domination. Qwest's inclusion in its Opposition to PageData's Motion of an Affidavit of Bryan Sanderson is irrelevant to this proceeding and simply demonstrates Qwest's attempts at obfuscation of the real issues. Qwest wants PageData to adopt an incomplete Arch interconnection agreement because it does not include all amendments that have been filed in Iowa but are applicable to Idaho (See Exhibit 5). When viewed in comparison of the entire Arch multi-state interconnection agreement that is filed in Iowa, the Western Wireless agreement and the US WEST New Vector agreement (discussed below), the discriminatory treatment of PageData and other local Idaho carriers is glaring.

PageData is bringing these proceedings before the Commission because (1) select competitors (Eschelon, McLeod, etc.) have received cash and/or other incentives not to participate in the Section 271 proceedings and (2) other Idaho paging carriers have gone out of business because of Qwest's practice of not providing equal access to its network, pricing discrimination, and discriminatory interconnection agreements.

The outline of PageData's experience is only a sample of what has happened to other Idaho carriers. This Motion was made to show the noncompetitive landscape in Idaho, including obvious discrimination against PageData, and the lack of the best pricing for Idaho consumers. Many companies and consumers have been hurt by Qwest's discriminatory practices. PageData is only one company representing the discrimination by Qwest to other parties. The two companies that would complain the most would be Eschelon and McLeod but they secretly received the provisions and terms they wanted, through an unlawful process, in order to keep out of the 271 proceedings.

## **Qwest Discriminatory Practices**

PageData has shown Qwest's pattern of illegal and discriminatory conduct not just against PageData but a large number of carriers throughout the territories Qwest operates in, including Idaho. This information was procedurally block by Qwest and not available during Qwest's original 271 hearings. The Idaho paging companies proceeding before the Idaho Commission (Case No. USW-T-99-24) was the first time on record that Qwest admitted that agreements existed that were confidential and not publicly filed.<sup>2</sup> Qwest defiantly stated that these actions were legal and the specific documents were confidential and therefore not public. The Idaho Commission chose not to look into the matter further. This conclusion is not surprising, given that the Hearing Examiner's employer (Liberty Consulting) in PageData's request for refund of unlawfully collected monies by Qwest (Case No. USW-T-99-24) was also a consultant to Qwest in its 271 application in Idaho. Qwest's admission to these secret agreements on the public record in the pagers Idaho proceeding was in part a catalyst for the Minnesota and Iowa investigation into Qwest's non-filing of interconnection agreements.

The states of Iowa, Minnesota and New Mexico did look further into the matter of secret interconnection agreements. After a considerable amount of time and resources investigating Qwest, Minnesota's Administrative Law Judge found that Qwest had discriminated knowingly and intentionally against carriers because Qwest had entered into secret interconnection agreements that it did not make public and available to other carriers to adopt.<sup>3</sup> PageData and other Idaho carriers have been discriminated by Qwest in

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<sup>2</sup> Evidentiary Hearing Transcripts, Case No. USW-T-99-24, July 25, 2001, pages 473-480

<sup>3</sup> Minnesota Administrative Law Judge's Findings of Fact, Conclusions and Recommendation In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OAH Docket No. 6-2500-14782-2, dated September 20, 2002

the same manner as was outlined in Minnesota's Administrative Law Judge's Findings of Fact (attached as Exhibit1). Iowa found that Qwest violated Board rule 199 IAC 38.7(4) by its failure to file interconnection agreements and Qwest is subject to fines and penalties.<sup>4</sup>

The same companies that were involved in the secret interconnection agreements with Qwest (Eshelon, McLeod, and Covad) also do business in Idaho. Therefore Idaho companies and Idaho consumers have also been adversely and negatively affected.

Iowa approved Qwest's Section 271 proceedings because it has the authority to fine Qwest for its discriminatory actions and require Qwest to pay damages. Unlike Iowa, Minnesota, and New Mexico the Idaho Commission rules do not permit the Commission to fine or penalize Qwest in any way for these actions or compensate the complaining companies for damages. This circumstance alone is reason enough to reopen Qwest's 271 proceedings.

Idaho carriers have not had any opportunities to adopt favorable provisions out of the secret interconnection agreements and especially the agreements that Qwest has recently cancelled, to prohibit other companies from adopting. The fact that Qwest has cancelled some of the Eschelon agreements in an attempt to keep from making them publicly available should be considered as a factor of discrimination in Idaho.

Based on the revelations of the "secret" agreements<sup>5</sup> between Qwest and the supposedly competitive carriers in Idaho, the Idaho Commission is certainly not in position to know the true state of competition in Idaho. Qwest has hindered competition

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<sup>4</sup> Iowa Docket No. FUC-02-2, AT&T Complaint vs. Qwest Corporation, "Order Making Tentative Findings Giving Notice For Purpose of Civil Penalties and Granting Opportunity to Request Hearing", issued May 29, 2002, page 22

from participating in Qwest's Section 271 proceeding by conspiring with other telecommunication providers (such as Eschelon and McLeod) and providing them with discriminatory, secret interconnection agreements, cash, and access to Qwest executives for dispute resolution in exchange for not participating in the Section 271 proceedings.<sup>6</sup> Again, these carriers provide telecommunication services in Idaho, but because of the agreements not to participate in the 271 hearings the Commission did not receive all relevant information in the case.

Qwest did not offer the Western Wireless Interconnection Agreement or US WEST New Vector Interconnection Agreement to Idaho paging carriers because it would have substantially cut into Qwest's revenues. Qwest only offered pre- and post-Metzger<sup>7</sup> interconnection agreements with paging companies that offered far less services and capabilities and at higher prices than the Western Wireless or US WEST New Vector agreements. This is discrimination in violation of Section 252(i) and 251(c)(1) when Qwest only make available, the pre- and post-Metzger agreements when the Western Wireless and US WEST New Vector agreements were clearly available. The TSR Order says Qwest has to give the same pricing, terms and conditions whether or not a carrier had an interconnection agreement.

On its effective date, given the clear language of the Local Competition Order, Defendants should not have doubted their obligation to cease charging Complainant for the facilities at issue here, regardless of whether Complainants subsequently requested interconnection negotiations pursuant to sections 251 and 252 of the Act<sup>8</sup>

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<sup>5</sup> Evidentiary Hearing Transcripts, Case No. USW-T-99-24, July 25, 2001, pp.473-478, Mr. Jones, Mr. Batt, Ms. Fraser, Hearing Examiner.

<sup>6</sup> Minnesota Administrative Law Judge's Findings of Fact, Conclusions and Recommendation In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OAH Docket No. 6-2500-14782-2, dated September 20, 2002

<sup>7</sup> See Attached Pre- and Post-Metzger Interconnection Agreements Excerpts, Exhibit 2

<sup>8</sup> FCC Memorandum Opinion and Order FCC 00-194 ("TSR Order"), paragraph 29



### **Single Point of Interconnection Discrimination**

Under the agreements Qwest offered Idaho paging carriers, the carriers had to establish a physical presence in each local calling area rather than have one point of interconnection. In fact the paging carriers could not have a single point of interconnection. The local calling areas were much smaller than present day. Nampa/Caldwell, Mountain Home, Payette, Blackfoot, American Falls, Rexburg, Sun Valley and other areas that are now included in another local calling area were once their own separate local calling area.

A single point of interconnection was available to Western Wireless and US WEST New Vector since 1997.<sup>9</sup> Section D(1)(c) of the US WEST New Vector Agreement says:

The Parties acknowledge that Carrier will initially serve all of the customers within a given LATA through a single Carrier switch. The Parties also acknowledge that Carrier may, in the future, deploy additional switches in each LATA. For purposes of call termination, the initial Carrier switch shall be treated as an end office switch.

In a letter to Qwest dated August 29, 1998, attached as Exhibit 3, PageData requested a single point of interconnection in Boise. PageData was told that Qwest did not do a single point of interconnection in the LATA. This is in direct opposition of the single point of interconnection under the Western Wireless and US WEST New Vector agreements, effective in 1997.

During hearings in July 2001, Ms. Fraser, a Qwest representative, appears to have perjured herself and Qwest by saying:

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<sup>9</sup> Western Wireless Contract No. USW-T-96-11 and WST-T-96-1, approved by IPUC January 17, 1997 and US WEST New Vector Contract No. USW-T-97-15 approved by the IPUC August 28, 1997

We did not offer that service at all under any circumstances until late last year, and then it's only offered to certain types within Type 2. So, it wouldn't be applicable here, because nobody has Type 2.<sup>10</sup>

This statement by Ms. Fraser was patently incorrect. This has been Qwest's stated policy to local Idaho carriers even though it was providing the single point of interconnection with Western Wireless and Qwest's subsidiary, US WEST New Vector since 1997. Qwest was arguing the pre- and post-Metzger agreements and the TSR Order with paging carriers when all along they were offering a single point of interconnection with no recurring charges for T-1 facilities under the Western Wireless and US WEST New Vector agreements since 1997.

In the FCC's July 17, 2002 Order DA 02-1731<sup>11</sup> the FCC clarified that carriers have always been able to adopt a single point of interconnection.

52. Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA. The Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network. Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic. The interplay of these rules has raised questions about whether they lead to the deployment of inefficient or duplicative networks. The Commission is currently examining the interplay of these rules in a pending rulemaking proceeding. As the Commission recognized in that proceeding, incumbent LECs and competitive LECs have taken

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<sup>10</sup> Evidentiary Hearing Transcripts, Case No. USW-T-99-24, July 25, 2001, Page 401, lines 1-5

<sup>11</sup> In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al., CC Docket Nos. 00-218, 00-249, 00-251, paragraphs 52, 301, and 302

opposing views regarding application of the rules governing interconnection and reciprocal compensation.

301. We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.

302. Verizon proposed, late in this proceeding, that the petitioners should conduct a traffic study to develop a factor to account for the virtual FX traffic that appears to be "local" traffic. However, Verizon's contract fails to lay out such a mechanism in any detail. Most importantly, Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.

### **Price Discrimination**

Consequences of Qwest not offering the Western Wireless or US WEST New Vector Agreement to paging carriers was that Qwest got to milk a vast sum of money from local Idaho carriers it would not have been able to get under the Western Wireless and US WEST New Vector agreements.

See Appendix A (attached as Exhibit 4) page 1 out of the US WEST New Vector agreement under Type 2A-1 (One Way In Paging), the initial cost for T-1 installation is \$78.92 and then there are no recurring charges. On Appendix A, page 2 under Type 2B-1 (One Way In Land to Mobile) the initial charge for a T-1 is \$78.92 with no recurring charges. So, under this agreement PageData would have owed Qwest \$0 for recurring

charges for T-1 facilities. If Qwest had offered all Idaho paging carriers the Western Wireless or US WEST New Vector agreements, then they also would not have owed Qwest any money for T-1 facilities recurring charges. The Telecommunications Act of 1996 requires Qwest not to provide discriminatory rates for interconnection, access to network elements and services. This is the issue Qwest has refused to address.

### **Qwest Restrictions on Facilities**

Qwest does not want to give Idaho paging carriers the same interconnection as Western Wireless and US WEST New Vector. Qwest has failed to provide paging companies with equal interconnection under the Telecommunications Act versus other telecommunications companies that are given the full range of telecommunications services. This is in violation of Sections 251(c), 252(i) and 51.307(c)

Section 51.307(c) of the FCC's rules provides that:

[a]n incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions and capabilities, in a manner that ***allows the requesting telecommunications carrier to provide any telecommunications service*** that can be offered by means of that network element. *(Emphasis added)*

Section 251(c)(2) and 251(c)(2)(c) says Qwest has:

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network –

that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection

For example, Qwest has provided no legal basis for restricting telecommunications companies that Qwest has classified as Type 1 paging companies in Qwest's 14 state territory, to one way paging traffic only. This practice is discrimination.

Similar to other Qwest discriminatory practices, it is Qwest's company policy but has not basis in law or FCC rules.<sup>12</sup> The Western Wireless and US WEST New Vector agreements allow a telecommunication company to provide unrestricted services per Section 51.307(c).

### **Qwest's Failure to Provide Facilities**

Qwest frustrated, hampered, and delayed PageData in installing requested interconnection facilities. At every meeting with Qwest from interconnection negotiations, settlement meetings, to hearings before the IPUC and through numerous letters of correspondence (from PageData, PageData's attorney, and the IPUC) PageData has brought up its request for 10 T-1s. From the entire interaction that PageData has had with Qwest, both directly and indirectly, how can Qwest still claim no knowledge of a request for interconnection facilities and not have an order for 10 T-1s? If PageData had been able to avail itself of two full-time Qwest employees located at PageData's premises to assist in ordering facilities as per the Eschelon Agreement<sup>13</sup>, PageData's T-1s would have been installed. There would have been no other manipulation of the process.

Qwest also did not give PageData or other local carriers access to upper management (vice-presidents up to the CEO) to resolve disputes. Because PageData and other local carriers did not have these resources that large multi-state carriers had the local Idaho carriers were discriminated against.

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<sup>12</sup> Evidentiary Hearing Transcripts, Case No. USW-T-99-24, July 25, 2001, testimony of Cheryl Fraser, pp. 586-587.

<sup>13</sup> "Confidential/Trade Secret Stipulation Between ATI (Eschelon) and US West" dated February 28, 2000, Dedicated Provisioning Team, paragraphs 11 and 12.

## **Unusual Circumstances - Qwest's Compliance with Sections 251 and 252**

Qwest intentionally and knowingly violated Sections 251 and 252 and Idaho Code 62-609(2). The Minnesota Administrative Law Judge summarized public interest implications well:

356. There are five different public interest implications arising from the unfiled agreements. First, Qwest's attempt to subvert the "pick and choose" provisions of the Act by not filing the agreements; second, Qwest's attempts to prohibit CLECs from participating in the 271 proceedings; third, Qwest's attempts to prohibit CLECs from participating in the Qwest/US West merger proceeding; fourth, Qwest's attempt to prevent disclosure of negative performance information in the 271 proceeding; and fifth, Qwest's attempt to have a CLEC become an advocate for Qwest in various commission proceedings whenever Qwest requested it....

357 Non-discrimination by ILECs is a bedrock principle of the Act. The filing of interconnection agreements, and the pick and choose requirements of Section 252, give life to that principle...Qwest knowingly prevented other CLECs from picking and choosing their provisions. This demonstrates a hostility to the non-discrimination concept that raises serious questions about how Qwest will cooperate with local competition efforts in the future.<sup>14</sup>

Qwest knew that it was not in compliance with federal and state laws when it failed to file secret interconnection agreements. Qwest defended its actions vigorously and delayed the discovery of the information now presented to the Commission by PageData. Qwest procedurally blocked efforts by three Idaho carriers to get this information, which at that time would have affected Qwest's 271 checklist. Qwest is still out of compliance in Idaho by failing to file the entire Arch and Metrocall interconnection agreements including all amendments. Qwest filed secret agreements with Arch, PageNet (which we have attached as Exhibit 5) and others, with Iowa's Utility

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<sup>14</sup> Minnesota Administrative Law Judge's Findings of Fact, Conclusions and Recommendation In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OAH Docket No. 6-2500-14782-2, dated September 20, 2002, Paragraph 356, 357

Board, but only after being ordered. These same agreements have not been filed in Idaho even though Idaho is clearly covered in the agreements. In Qwest's endeavor to get into Idaho's lucrative long distance market, Qwest is attempting to hide its true record of behavior in a procedural move to say that PageData's Motion is untimely.

### **Definition of Interconnection Agreement**

On October 4, 2002 the FCC ruled on Qwest's Request for Declaratory Ruling in Docket No. 02-89 (FCC Document # 02-276)<sup>15</sup> leaving to the states the ability to adopt a broader definition of what constitutes an interconnection agreement. The Idaho Commission is at a severe disadvantage as compared to the other public utility commissions in that Idaho does not have the ability to assess fines or damages to the discriminating carrier. Most innovation in the telecommunication industry comes from small businesses.

In order to protect the Idaho consumer and to protect Idaho's local telecommunications industry, the Idaho Commission should adopt the broadest definition of interconnection agreement so that the Idaho consumer and telecommunications industry is not at a disadvantage in competition with other states. It would also end disputes over what constitutes an interconnection agreement in the case that a document is considered an amendment to a multi-state interconnection agreement in New Mexico or Iowa, for example, but that same document relating to the multi-state interconnection agreement is not filed in Idaho. If that document were not filed in Idaho it would put the Idaho consumer and carrier at a severe disadvantage in the marketplace and would reduce the competition in Idaho to satellite divisions of large companies.

### **Qwest's Dispute Resolution Refund Formula**

Qwest has established a pattern for dispute resolutions with paging carriers, CMRS carriers, and CLECs that have been revealed in the secret interconnection agreements with Eschelon, McLeod, Arch, PageNet, Metrocall, etc.:

- 1) There are cash refunds given from Qwest to the other party within a very short time period for overcharges;
- 2) There are billing credits given covering a certain time frame;
- 3) The carrier accounts are brought to zero balances;
- 4) The carrier is allowed to adopt a new interconnection agreement to resolve any of the previous billing provision disputes; and
- 5) There is a guideline established for handling any extraneous billing problems during the time period for a new interconnection agreement to take effect.

As an example, the Arch agreement stated:

PAYMENT. Within five (5) business days from the date of the request for dismissal of the FCC Complaints as required by Section 6 below, US WEST shall pay Arch the sum of \$1,500,000 U.S. dollars. Further, within sixty (60) days from execution of this Confidential Billing Settlement Agreement, US WEST agrees to provide Arch with bill credits totaling \$2,700,000 U.S. dollars. These bill credits, along with the payments of the \$1,500,000 U.S. dollars, will settle all billing issues for the accounts listed on Exhibit 1 for the period ending on April 30, 2000, provided, however, US WEST agrees not to take any action, whether before a court, regulatory agency, or other adjudicatory body, to collect any amounts it later claims are owed by Arch under the account numbers listed in Exhibit 1 through April 30, 2000. Additionally, for the period from May 1, 2000 to the effective date of the new interconnection agreements described in Section 3 above, US WEST agrees not to bill Arch for interconnection facilities, or, if it renders such bills in error, to provide Arch with a credit

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<sup>15</sup> FCC Memorandum Opinion and Order #02-276, WC Docket No. 02-89, in the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1).



for any amounts billed to it for interconnection facilities during this period; provided, however, Arch agrees to continue paying appropriate charges for non-interconnection facilities and services, including, but not limited to, Wide Area Calling services and private lines, for as long as it obtains such facilities and services from US WEST. Arch also agrees not to bill US WEST for reciprocal compensation until the effective dates of the new interconnection agreements described in Section 3 above. These payment arrangements shall be in consideration for settlement of all disputes in connection with the Billing Disputes and dismissal of the FCC Complaints.<sup>16</sup>

Iowa and New Mexico determined that Settlement Agreements with Arch and PageNet were interconnection agreements. According to the guidelines set forth in the FCC's Order in Docket 02-89<sup>17</sup> (attached as Exhibit 6), the Settlement Agreements are interconnection agreements because they create going forward obligations.

This dispute resolution package has been given to a select few multi-state carriers and has not been offered by Qwest to all carriers, including local Idaho carriers, on a non-discriminatory basis. Qwest knowingly and intentionally discriminated against local Idaho carriers in this action. Qwest knowingly and intentionally did not file all the interconnection agreements in Idaho that they filed in Iowa and New Mexico even though Idaho is included in the multi-state agreements.

Iowa, Minnesota, and New Mexico knew the effects of having these secret interconnection agreements available for all carriers to be able to pick and choose provisions. It will save carriers much time and money in negotiating with Qwest as well as saving the various Commission's staff time and resources. This will have a settling effect on the industry, resolve many issues, and will give better prices to the consumer.

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<sup>16</sup> "Confidential Billing Settlement Agreement" between US West Communications, Inc. and Arch Communications Group, including MobileMedia Communications, Inc. and Mobile Communications Corporation of America and Arch Paging, Inc., and Arch's other subsidiaries, affiliates, and assigns, effective June 16, 2000, paragraph 5

## **Qwest Credibility**

It has been shown by numerous Commissions covering separate instances that Qwest's credibility should be questioned. Qwest is being investigated by the U.S. Congress and several state Commissions in the territories Qwest provides services, over the same issues that PageData originally brought before the Idaho Commission in a separate proceeding (Case No. USW-T-99-24). PageData does not have the resources and subpoena power of an Iowa or Minnesota Commission or other state and federal regulatory bodies. All of these investigations by governmental bodies were precipitated by Qwest's misconduct.

Qwest and Eschelon conspired together to hand competitors and Commissions inaccurate report cards:

On October 8, 2001, Suzy Beesley, on behalf of Richard Smith at Eschelon, sent an email to Dana Filip and Audrey McKenney, both of Qwest, attempting to show how Eschelon had assisted Qwest over the prior two years. Among other benefits, Mr. Smith notes "Eschelon has not made its report card of Qwest's performance available to other carriers or to state commissions or the FCC. These report cards document unsatisfactory performance by Qwest in a number of categories from missed installations to major network outages." Mr. Smith goes on to note "Eschelon has not disclosed any problems it has experienced with Qwest's access of billing records or with Qwest's general billings for UNEs and UNE-E lines." The letter points out that Eschelon has covertly assisted Qwest in dockets in which Eschelon would otherwise have been considered an adverse party. For example, Mr. Smith writes, "in the [sic] Minnesota, Eschelon has helped Qwest in wholesale service quality proceedings by working to reduce differences between CLEC proposed quality measures and Qwest proposed measures and by point out defects in Qwest testimony in advance of cross-examination of Qwest witnesses."<sup>18</sup>

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<sup>17</sup> FCC Memorandum Opinion and Order #02-276, WC Docket No. 02-89, in the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1).

<sup>18</sup> Minnesota Administrative Law Judge's Findings of Fact, Conclusions and Recommendation In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OAH Docket No. 6-2500-14782-2, dated September 20, 2002, Paragraph 367

Qwest personnel have given testimony that was directly contradicted by written agreements between Qwest and Eschelon.

The testimony of Qwest witness Judy Rixe regarding the “consulting” agreement between Qwest and Eschelon is not credible. On May 1, 2002, Ms. Rixe testified “Well, number 1, we don’t offer discounts.” Her testimony is directly contradicted, however, by Qwest-drafted discount offers she possessed that Qwest produced to the Department only after Ms. Rixe had been cross-examined.<sup>19</sup>

On a local Idaho basis, Qwest personnel have given testimony concerning a single point of interconnection that was directly contradicted by interconnection agreements with Western Wireless and US WEST New Vector effective in 1997.

During hearings under Case No. USW-T-99-24, Ms. Fraser said:

We did not offer that service at all under any circumstances until late last year, and then it’s only offered to certain types within Type 2. So, it wouldn’t be applicable here, because nobody has Type 2.<sup>20</sup>

It has been shown that Qwest intentionally filed inaccurate settlement documents with various Commissions.

Qwest and the Small CLECs intentionally filed a misleading settlement document with the ALJ and the Commission that did not include the pick-and-choose provision cited in the Complaint or disclose that it even existed.<sup>21</sup>

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<sup>19</sup> Minnesota Administrative Law Judge’s Findings of Fact, Conclusions and Recommendation In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OAH Docket No. 6-2500-14782-2, dated September 20, 2002, Paragraph 141

<sup>20</sup> Evidentiary Hearing Transcripts, Case No. USW-T-99-24, July 25, 2001, Page 401, lines 1-5

<sup>21</sup> Minnesota Administrative Law Judge’s Findings of Fact, Conclusions and Recommendation In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OAH Docket No. 6-2500-14782-2, dated September 20, 2002, Paragraph 275

## **Integrity of the Public Record**

It should be the Commission that decides what interconnection agreements should be available to Idaho carriers to benefit Idaho consumers. As has been shown in Minnesota and Iowa, Qwest did not keep the public record accurate to include all interconnection agreements to which it was a party. For example in the Minnesota Small CLECs agreement, even though they are not in Idaho, the Small CLECs can adopt provisions out of Idaho agreements or any other agreements in Qwest's territory.<sup>22</sup> This provision had not been made available to other carriers. However, the Small CLECs agreement provisions should be available to Idaho carriers as well.

According to information uncovered in Minnesota's proceedings, Eschelon did not participate fully in Qwest's Section 271 proceeding:

On October 8, 2001, Suzy Beesley, on behalf of Richard Smith at Eschelon, sent an email to Dana Filip and Audrey McKenney, both of Qwest, attempting to show how Eschelon had assisted Qwest over the prior two years. Among other benefits, Mr. Smith notes "Eschelon has not made its report card of Qwest's performance available to other carriers or to state commissions or the FCC. These report cards document unsatisfactory performance by Qwest in a number of categories from missed installations to major network outages." Mr. Smith goes on to note "Eschelon has not disclosed any problems it has experienced with Qwest's access of billing records or with Qwest's general billings for UNEs and UNE-E lines." The letter points out that Eschelon has covertly assisted Qwest in dockets in which Eschelon would otherwise have been considered an adverse party. For example, Mr. Smith writes, "in the [sic] Minnesota, Eschelon has helped Qwest in wholesale service quality proceedings by working to reduce differences between CLEC proposed quality measures and Qwest proposed measures and by point out defects in Qwest testimony in advance of cross-examination of Qwest witnesses."<sup>23</sup>

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<sup>22</sup> Minnesota Administrative Law Judge's Findings of Fact, Conclusions and Recommendation In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OAH Docket No. 6-2500-14782-2, dated September 20, 2002, Paragraph 274

<sup>23</sup> Minnesota Administrative Law Judge's Findings of Fact, Conclusions and Recommendation In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements; OAH Docket No. 6-2500-14782-2, dated September 20, 2002, Paragraph 367

This correspondence indicates that Eschelon, and likely others, did not submit accurate information in Qwest's Section 271 proceeding in Idaho. Therefore, the Commission should order Eschelon, Covad, and McLeod to submit revised report cards to the Commission in light of the new evidence presented in Minnesota. This would increase the reliability of the public record in this case.

Qwest may attempt to argue that the ROC OSS test was not dependent on the CLEC participation because it was focused on a pseudo-CLEC. However, it would have been obvious to Qwest that they were dealing with a pseudo-CLEC because the following would be checked under the normal course of doing business such as a Federal Tax ID Number, corporate papers, registration at each Secretary of State's office, Dun & Bradstreet credit check, ACNA and OCN designations, insurance certificates, workman's compensation certificates, a telephone number that matches caller ID, and bank accounts, among other general business requirements. Qwest would have checked a combination of these items. If all of the data checked would not have been in place for the pseudo-CLEC, this would have clued Qwest to be on its best behavior. The ROC OSS test also does not test wireless carriers.

Idaho Commission staff stated, "Based on supplemental records provided by Qwest, Staff is not convinced the record demonstrates that Qwest has fully and irreversibly opened the local telecommunications market to competition for residential customers."<sup>24</sup> Previously, the Commission had no reason to question

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<sup>24</sup> Idaho PUC Case No. USW-T-00-3, In the Matter of US West Communications Inc. Motion for Alternative Procedures to Manage its Section 271 Application, "Comments of the Commission Staff", dated October 20, 2001, page 7

Qwest's Affidavits. However, recent information about Qwest's credibility brings into question the Qwest Affidavits and information supplied to the Commission by Qwest in response to the Track A requirements and should be reviewed and verified as to its accuracy.

### **Qwest Public Promises Broken**

In Qwest's ex parte letter dated August 20, 2002 to Marlene H. Dortch of the FCC, Qwest says carriers can adopt provisions of agreements that Qwest is now filing with the state Commissions of Colorado, Idaho, Nebraska and North Dakota.<sup>25</sup> However, Qwest has been canceling terms and conditions of secret interconnection agreements so local carriers cannot adopt them. PageData has been attempting to adopt provisions (including cash refunds, Qwest personnel on carrier's site for provisioning assistance, and installation of facilities within 48 hours) from interconnection agreements as well as complete interconnection agreements but has received no valid response from Qwest.

#### **Adoption of Interconnection Agreement**

As a further example of Qwest's unlawful behavior, Qwest has refused to allow PageData to adopt a favorable interconnection agreement. It appears Qwest may be in some quandary between its "secret" agreements and the required public agreements that it must make available to PageData. The US WEST New Vector agreement is based off the Western Wireless Agreement, so they are one in the same. If the Western Wireless Agreement has expired PageData will adopt the US WEST New Vector agreement. Per that Agreement, PageData requests the installation of 10 Type 2 T-1s in its Boise location. If Qwest has any misunderstanding about this request, then according to the

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<sup>25</sup> DA-02-2065A2 Regarding *Applications of Qwest Communications International Inc. for Authorization Under Section 271 of the Communications Act.* WC Dockets No. 02-148 and 02-189

Eschelon agreement, PageData requests two Qwest personnel at PageData's location to assist with the provisioning order for interconnection facilities so there can be no further misunderstanding or statements by Qwest that there is no order in their system for 10 Type 2 T-1s.

## **CONCLUSION**

PageData has shown above the overall pattern of illegal and discriminatory conduct of Qwest that has hindered open competition in Idaho. PageData is just a small representative example of Qwest's treatment of local Idaho carriers. Recent evidence of misconduct uncovered by the states of Iowa, Minnesota, and New Mexico also demonstrate Qwest's overall pattern of willful, illegal and discriminatory actions. Qwest's actions have restricted local markets to less than full and open competition. As shown above, Qwest has been able to shape the market and competition in Idaho to its liking by means of illegal and discriminatory behavior.

Minnesota and Iowa found that Qwest had discriminated against other local carriers by entering into special interconnection agreements with select carriers. The same select carriers operate in Idaho. Local Idaho companies were not offered the same prices, terms and conditions as Qwest made available to certain select carriers including Qwest's subsidiary US WEST New Vector.

Qwest failed in its duties under Sections 251 and 252 to give PageData the same terms and conditions as Western Wireless and Qwest's subsidiary, US WEST New Vector, with a single point of interconnection. Under those terms and conditions the original fee for installing 10 T-1s would have been \$789.20 with no recurring monthly

charges<sup>26</sup> and there would be no current dispute over the refund of over \$240,000 PageData paid Qwest for Qwest delivering its own traffic to PageData's point of interconnection. PageData is only a small representative sample of the money that is involved in Qwest's discriminatory practice of not offering the same terms and conditions to all carriers.

It is Qwest's cavalier disregard of Section 251 and Idaho Code 62-609(2) that should cause the Commission to hold up Qwest's Section 271 proceedings for further investigation. Idaho Commission staff stated, "Based on supplemental records provided by Qwest, Staff is not convinced the record demonstrates that Qwest has fully and irreversibly opened the local telecommunications market to competition for residential customers."<sup>27</sup> Qwest's 271 application before the Idaho Commission should be denied until the Commission reaffirms in light of the new evidence presented, that the local markets are open to competition, that Qwest is providing nondiscriminatory access to their network, that Qwest is providing nondiscriminatory pricing and that Qwest is in compliance with the federal act. Without reinvestigation, the decision to reconfirm Qwest's 271 application would be contrary to the public interest. By the Commission's inaction Qwest will interpret that the Commission is condoning Qwest's actions.

PageData believes that this Complaint is best addressed by reopening Qwest's 271 hearing and not in a separate hearing as suggested by Qwest. In the meanwhile, given PageData's clear and concise language of its request to adopt the US WEST New Vector interconnection agreement and the installation of 10 Type 2 T-1s at PageData's Boise

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<sup>26</sup> See Exhibit 4, US WEST New Vector Interconnection Agreement, pricing pages 1 and 2

<sup>27</sup> Idaho PUC Case No. USW-T-00-3, In the Matter of US West Communications Inc. Motion for Alternative Procedures to Manage its Section 271 Application, "Comments of the Commission Staff", dated October 20, 2001, page 7



location, Qwest can show good faith by immediately moving ahead to implement these two requests using procedures out of the Eschelon and Covad agreements, as publicly promised, and not wait until an order from the Commission.

PageData requests the Idaho Commission to reopen Qwest's Section 271 proceedings. However, in the event the Idaho Commission does not reopen Qwest's Section 271 proceedings, PageData requests the Commission hear this complaint under a separate proceeding and issue a hearing date and schedule.

Respectfully submitted this 9th day of October 2002.

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Joseph B. McNeal, d/b/a PageData,  
Appearing pro se

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of October, 2002, I caused to be served a true and correct copy of the foregoing REPLY TO QWEST'S ANSWER by hand delivery to the following:

Jean Jewell  
Idaho Public Utilities Commission  
472 West Washington  
Boise, ID 83702

Mary S. Hobson  
Stoel Rives LLP  
101 S. Capitol Blvd., Suite 1900  
Boise, ID 83702-5958

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JOSEPH B. MCNEAL

EXHIBIT 1

Minnesota's Administrative Law Judge's Findings of Fact

## EXHIBIT 2

Pre- and Post-Metzger and Type 1 & 2 Interconnection Agreement Excerpts

EXHIBIT 3

PageData's letter to Qwest dated August 29, 1998  
Requesting a Single Point of Interconnection

EXHIBIT 4

US WEST New Vector Interconnection Agreement Excerpts –  
Single Point of Interconnection Provision and Pricing Schedule

EXHIBIT 5

Unfiled Amendments/Settlement Agreements with Arch and PageNet

EXHIBIT 6

FCC Memorandum Opinion and Order #02-276, WC Docket No. 02-89,  
in the Matter of Qwest Communications International Inc.  
Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior  
Approval of Negotiated Contractual Arrangements under Section 252(a)(1).